

EXCERPTS FROM THE DEPOSITION OF
EGON DURBAN
TAKEN SEPTEMBER 7, 2021

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE TESLA, INC.)
SECURITIES LITIGATION) Case No. 3:18-cv-04865-EMC
Volume I
Pages 1 to 165

REMOTE VIDEOCONFERENCED VIDEOTAPED DEPOSITION OF
EGON PIERRE-DURBAN
Remotely in Los Angeles, California
Tuesday, September 7, 2021

Reported by:
ELIZABETH BORRELLI, CSR No. 7844, CCRR, CLR
JOB NO. 199146

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Remote Videoconferenced Videotaped
Deposition of EGON PIERRE-DURBAN, Volume I,
taken on behalf of the Plaintiffs, remotely in
Los Angeles, California, commencing at
10:31 a.m., Tuesday, September 7, 2021, before
Elizabeth Borrelli, a Certified Shorthand
Reporter in the State of California, License
No. 7844.

* * *

1 APPEARANCES OF COUNSEL:

2
3 For the Plaintiffs:

4 LEVI & KORSINSKY
5 BY: NICHOLAS PORRITT, ESQ.
6 ELIZABETH TRIPODI, ESQ.
7 KATHY AMES VALDIVIESO, ESQ.
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10
11 For Tesla:

12 COOLEY
13 BY: SARAH LIGHTDALE, ESQ.
14 55 Hudson Yards
15 New York, New York 10001

16
17 For the Witness:

18 DEBEVOISE & PLIMPTON
19 BY: JULIE RIEWE, ESQ.
20 BRANDON FETZER, ESQ.
21 801 Pennsylvania Avenue N.W.
22 Washington, DC 20004

23
24 Also Present:

25 KAREN KING, appearing remotely

SHARON BINGER, appearing remotely

1 LOS ANGELES, CALIFORNIA; TUESDAY, SEPTEMBER 7, 2021

2 10:31 A.M.

3
4 THE VIDEOGRAPHER: Good morning. My name
5 is Chris Jordan and I'm the legal videographer in
6 association with TSG Reporting. Due to the COVID-19
7 and following the practice of social distancing, I
8 will not be in the same room with the witness;
9 instead, I will record this videotaped deposition
10 remotely.

11 The reporter, Ms. Borrelli, also will not
12 be in the same room and will swear the witness
13 remotely.

14 Do all parties stipulate to the validity
15 of this video recording and remote swearing and that
16 it will be admissible in the courtroom as if it had
17 been taken following Rule 30 of the Federal Rules of
18 Civil Procedures and the state's rules where this
19 case is pending?

20 MR. PORRITT: Yes.

21 MS. RIEWE: Yes.

22 MS. LIGHTDALE: Yes.

23 MS. KING: Yes.

24 THE VIDEOGRAPHER: Thank you, Counsel.

25 Thank you.

1 This marks the beginning of the videotaped
2 deposition of Egon Durban being taken In Re: Tesla,
3 Inc., Securities Litigation, being held in the
4 United States District Court for the Northern
5 District of California, San Francisco Division.

6 The deposition is being taken on
7 September 7, 2021, at approximately 10:32 a.m.
8 Again, my name is Chris Jordan with TSG Reporting.
9 The court reporter is Liz Borrelli with TSG
10 Reporting.

11 Will counsel please state your name for
12 the record.

13 MR. PORRITT: Nicholas Porritt on behalf
14 of Plaintiff Glen Littleton and the class. With me
15 is Elizabeth Tripodi and Kathy Ames for the firm
16 Levi & Korsinsky LLP.

17 MS. RIEWE: And Julie Riewe. With me is
18 Brandon Fetzer with Debevoise & Plimpton, counsel
19 for the deponent, Mr. Egon Durban.

20 MS. LIGHTDALE: Sarah Lightdale from
21 Cooley on behalf of the defendants.

22 And I have two preliminary matters to
23 cover as we have covered in other depositions in
24 this case. The first is to confirm that as with --
25 again, as with other depositions, we will reserve

1 purely evidentiary objections until a later time and
2 only offer form objections. And the second is to go
3 ahead and put this transcript and designate it as
4 confidential under the protective order.

5 MR. PORRITT: And once again, noting your
6 statement, reserving rights, obviously, on that --
7 on the designation.

8 THE VIDEOGRAPHER: Has all counsel stated
9 their name and appearance?

10 MS. KING: This is Karen King, counsel for
11 Silver Lake, the defendant's [sic] employer.

12 MS. BINGER: And Sharon Binger as well for
13 Silver Lake.

14 THE VIDEOGRAPHER: Thank you.
15 Will the reporter please swear in the
16 witness.

17 EGON PIERRE-DURBAN,
18 having been duly administered
19 an oath in accordance with CCP 2094,
20 was examined and testified as follows:

21 EXAMINATION
22 BY MR. PORRITT:

23 Q. Good morning, Mr. Durban. As I stated
24 before, my name is Nicholas Porritt. I'm one of the
25 attorneys for the plaintiff in this matter.

1 Do you recall giving that testimony?

2 A. Yes.

3 Q. Have you reviewed the transcript of that
4 testimony?

5 A. No.

6 Q. Well, then, if I can refer you to -- it's
7 going to be page 82 of Exhibit 176.

8 And if you could also -- this testimony
9 was also in connection with the handwritten notes we
10 previously marked as Exhibit 175, which is tab 4 in
11 your binder.

12 So do you have that -- you can see that
13 now on the screen, page 82 of your testimony?

14 A. Yes.

15 Q. Okay. And you have your notes, tab 4 in
16 the binder in front of you?

17 A. Yes.

18 Q. Okay. The notes in the top right-hand
19 write Saudis and UAE Qatar. Or I say Qatar. I
20 don't -- do you see that there?

21 A. Yes.

22 Q. And you -- you see you testified in the
23 middle that starts as the line 15 here on page 82,
24 referring to the same notes, you mentioned Saudi
25 Arabia being interested, United Emirates/Qatar. (As

1 read) "I can't remember if I wrote that down or --
2 or -- I can't remember if I said that or if he had
3 spoke to them. I just can't remember."

4 Do you see that?

5 A. Yes.

6 Q. Okay. Sitting here today, do you have any
7 additional recollection about whether Mr. Musk, in
8 this conversation on August 6, 2018, mentioned the
9 UAE or Qatar?

10 A. No.

11 Q. Okay. If I could refer you to page 87 of
12 your testimony, Exhibit 176, you'll see there in the
13 middle starting at line 10, and this also refers to
14 your notes, Exhibit 175, there's a note saying
15 "shareholder account below 300."

16 Do you see those notes?

17 MS. RIEWE: Objection. I think it says
18 "amount."

19 MR. PORRITT: Oh, "amount," okay. Sorry.
20 I didn't mean to misspeak.

21 BY MR. PORRITT:

22 Q. Sorry, yes, shareholder amount below 300.
23 Do you see that, Mr. Musk -- Mr. Durban?

24 A. Yes.

25 Q. Sorry.

1 (Whereupon Exhibit 178 was marked for
2 identification.)

3 BY MR. PORRITT:

4 Q. So if you could just take a chance to read
5 Exhibit 178, Mr. Durban. I have a question
6 regarding the first paragraph, but please read --

7 A. Yep, I've read the first paragraph.

8 Q. Okay. Here in this -- so would you have
9 reviewed a -- this press release before it was
10 issued by Silver Lake?

11 A. Yes.

12 Q. Okay. And in this press release Silver
13 Lake says, "The firm secured limited partner capital
14 commitments of 14.5 billion."

15 Do you see that?

16 A. Yes.

17 Q. Okay. So in this press release, Silver
18 Lake uses the word "secured" talking about capital
19 commitments and funding, correct?

20 A. Yes.

21 Q. Okay. How -- what was the status of these
22 capital commitments described here in this press
23 release as of April 18, 2017?

24 A. Contractual.

25 Q. Okay. So you had binding legal contracts

1 committing that capital to Silver Lake?

2 A. Yes.

3 MS. RIEWE: Objection to form.

4 THE WITNESS: Yes.

5 BY MR. PORRITT:

6 Q. Okay. Was that the status that the
7 potential funding for a going private transaction of
8 Tesla had on August 7, 2018?

9 MS. RIEWE: Objection to form.

10 MS. LIGHTDALE: Objection to form.

11 THE WITNESS: No.

12 MR. PORRITT: Why don't we bring up...

13 BY MR. PORRITT:

14 Q. As of August 7, 2018, you had not spoken
15 to any potential investors in the going private
16 transaction; is that correct?

17 A. Sorry, could you repeat the question.

18 Q. Sure. As of August 7, 2018, you had not
19 spoken to any potential investors in a going private
20 transaction with Tesla; isn't that correct?

21 A. No.

22 Q. No, you have not spoken to anyone?

23 A. No, had not spoken to any.

24 Q. Okay. At that time were you aware that
25 Mr. Musk had made an any form of proposal to the

1 page 17, I think just following on to that text we
2 were just discussing. And Mike Bingle sends you a
3 text saying, "Any life to that one?"

4 Do you see that?

5 A. I do.

6 Q. Is that referring to this potential Tesla
7 transaction that you were looking at at the time?

8 A. I don't recall.

9 Q. A little bit further down on page 17 you
10 wrote to Mr. Bingle, Mr. Hao, and Mr. Mondre, "My
11 gut is he has and/or can raise the money (maybe
12 easily) after reading everything and preparing."

13 Do you see that?

14 A. I do.

15 Q. Okay. Do you recall what your basis for
16 that statement was?

17 A. I do not.

18 Q. Okay. Was this sent before your meeting
19 with Mr. -- Mr. Musk?

20 A. I don't recall, actually.

21 Q. So do you recall meeting with Mr. Musk on
22 August 10, 2018, at his home?

23 A. I do.

24 Q. Okay. Did you provide Mr. Musk with any
25 material at that meeting?

1 A. I believe we made a presentation, or
2 prepared a presentation.

3 Q. Okay.

4 MR. PORRITT: All right. Elizabeth, why
5 don't we bring over the August 10, 2018, discussion
6 materials, Bates-stamped 1 through 35. I'll read
7 into the record. This will be Exhibit 179.

8 (Whereupon Exhibit 179 was marked for
9 identification.)

10 MS. TRIPODI: Sure. And Mr. Durban,
11 that's tab 11 in your binder.

12 THE WITNESS: Thank you. I'm on it.

13 MR. PORRITT: All right. So I've placed
14 before the witness a document marked as Exhibit 179.
15 It is a presentation dated August 10, 2018,
16 Bates-stamped SL_3P00000001 through 35.

17 I'll tell the witness I only have
18 questions on pages 3 and 29 and 30 of the
19 presentation but he should familiarize himself with
20 it to the extent he wants to.

21 THE WITNESS: Thank you, but you may
22 proceed.

23 BY MR. PORRITT:

24 Q. Okay. Oh, actually, and 16. I apologize.

25 Is this the presentation you made to

1 Mr. Musk on August 10, 2018?

2 MS. RIEWE: Objection --

3 THE WITNESS: Yes.

4 MS. RIEWE: Objection to form.

5 THE WITNESS: Yes, I believe so.

6 BY MR. PORRITT:

7 Q. Okay. Did you physically hand Mr. Musk a
8 copy of this?

9 A. I don't -- I don't recall if -- if he
10 retained a copy, but I'm sure we went through a copy
11 of this.

12 Q. Okay. So if I can refer you to page 3 of
13 Exhibit 179, it's a slide titled, "Benefits of going
14 private."

15 A. Yes.

16 Q. All right. The second bullet point there
17 is, "Eliminate negative sentiment and disinformation
18 from short sellers; impacts customer and employees."

19 Do you see that?

20 A. Yes.

21 Q. Okay. Was that -- why was that identified
22 as a benefit of going private for Tesla?

23 A. If I recall correctly, there was a fair
24 amount of short selling interest in the company and
25 it created negative sentiment over the company.

1 Q. All right. Is that something that
2 Mr. Musk told you?

3 A. I don't recall whether it's him or whether
4 it was something that we had sort of read and
5 processed in the press.

6 Q. Do you know, did Silver Lake do any work
7 to analyze the extent of the short interest in -- or
8 short position in Tesla in August 2018?

9 A. I don't recall.

10 THE VIDEOGRAPHER: I'm sorry, Mr. Durban.
11 Can I have you move a little to your left. I
12 believe you're kind of out of the scope -- oh, thank
13 you.

14 THE WITNESS: There we go.

15 BY MR. PORRITT:

16 Q. At this time was Silver Lake a
17 shareholder? Did it own any shares in Tesla?

18 A. I don't think so. I don't know.

19 Q. Okay.

20 A. Not -- not in the -- not in any funds that
21 I was responsible -- part of the partnership
22 responsible for, so I'll...

23 Q. Understood. Everything is to the limit of
24 your knowledge. I understand.

25 A. Yeah.

1 Q. Right. In the seventh bullet point,
2 subbullet there, it says, "Opportunity for SWF
3 preferred equity and more flexible funding of new
4 capital projects."

5 Do you see that?

6 A. Yes.

7 Q. What is SWF referring to?

8 A. Sovereign wealth fund.

9 Q. Oh, sovereign wealth fund, okay.

10 If I can refer you to the next page, so
11 page 4. Do you -- do you have that in front of you?
12 It's a slide titled, "Illustrative Transaction
13 Setup."

14 A. Yes.

15 Q. Okay. At this point was there any
16 particular -- a particular structure for the
17 transaction that was -- you were considering?

18 A. No.

19 Q. Okay. On this slide there's a reference
20 to -- on the -- on the right-hand column in the --
21 in the two boxes, "Merlin's equity and vested
22 unexercised options convert into common and entire
23 stake roles into NewCo."

24 Do you see that?

25 A. Yes.

1 Q. All right. Is Merlin there a reference to
2 Elon Musk?

3 A. I believe so.

4 Q. Okay. At this time, by August 10th, had
5 you spoken to any potential investors in a going
6 private transaction with -- involving Tesla?

7 A. I don't recall but I don't believe so.

8 Q. Okay. So in -- when you're discussing
9 these two scenarios here on page 4 of Exhibit 179,
10 this is -- this -- at this point, this is just
11 speculative from Silver Lake?

12 MS. RIEWE: Objection to form.

13 THE WITNESS: Yes.

14 BY MR. PORRITT:

15 Q. If I can refer you to page 16 of
16 Exhibit 179, a slide titled "Alignment with
17 Sovereign Fund Investment."

18 Do you see that?

19 A. Yes.

20 Q. Okay. I apologize. You know, on the
21 first one, I just skipped a page. Sorry, page -- if
22 I can refer you to page 10.

23 Oh, you know what? Sorry. I apologize.

24 Let's go to 16. (Mumbling.)

25 Exhibit -- one column there is titled

1 "Alignment with Sovereign Fund Investment." Do you
2 see that?

3 A. Yes.

4 Q. And then the second bullet is,
5 "Oftentimes, these investments are not just
6 'passive,' but also include the expectation of job
7 creation in the local economies."

8 A. Yes.

9 Q. Okay. First of all, was this something
10 that you discussed with Elon Musk at the August 10th
11 meeting?

12 A. I don't recall.

13 Q. Okay. What was your -- what is the basis
14 for this -- for the points contained on this slide
15 regarding investments by sovereign wealth funds?

16 A. Can you clarify the question, please.

17 Q. Well, I guess, let me ask a different
18 question, then. Maybe we're -- had Silver Lake had
19 any investments which also involved investments from
20 sovereign wealth funds?

21 MS. RIEWE: Objection to form.

22 THE WITNESS: Yes, we've invested with
23 sovereign wealth funds previously.

24 BY MR. PORRITT:

25 Q. And you had -- that was true in

1 August 2018?

2 A. Correct.

3 Q. Okay. So was the basis for this slide
4 based on Silver Lake's experience investing with
5 sovereign wealth funds?

6 MS. RIEWE: Objection to form.

7 THE WITNESS: Yes.

8 BY MR. PORRITT:

9 Q. Okay. If I can refer you to page --
10 sorry, page 29 --

11 A. Yes.

12 Q. -- of Exhibit 179, the Illustrative
13 Public-to-Private Process Timeline. Do you see
14 that?

15 A. Yes.

16 Q. Once again, this was -- was this prepared
17 based on Silver Lake's experience in prior
18 public-to-private transactions?

19 MS. RIEWE: Objection to form.

20 THE WITNESS: Yes.

21 BY MR. PORRITT:

22 Q. Okay. The point one there -- the first
23 point is, "Submit full proposal to board following
24 arrangement of committed financing." Do you see
25 that?

1 A. Yes.

2 Q. Okay. Was it your understanding that as
3 of August 10th, no formal proposal had yet been
4 submitted to the Tesla board?

5 MS. RIEWE: Objection to form.

6 THE WITNESS: Yes.

7 BY MR. PORRITT:

8 Q. And then at point three there is, "Sign
9 merger agreement/announce deal."

10 Do you see that?

11 A. Yes.

12 Q. Okay. And this is consistent with your
13 experience that public-to-private transactions are
14 usually announced after a definitive agreement has
15 been signed?

16 MS. RIEWE: Objection to form.

17 THE WITNESS: Sorry, can you please repeat
18 the question.

19 BY MR. PORRITT:

20 Q. Sure. Is that your -- is that consistent
21 with your experience regarding the timing of the
22 announcement of a public-to-private transaction?

23 A. Yes.

24 MS. RIEWE: Objection to form.

25 MR. PORRITT: Okay.

1 THE WITNESS: Sorry, Julie.

2 BY MR. PORRITT:

3 Q. Okay. On this timeline here on page 29 of
4 Exhibit 179, on August 10, 2018, where were you on
5 this timeline?

6 MS. RIEWE: Objection to form. Lacks
7 foundation.

8 BY MR. PORRITT:

9 Q. All right. Strike -- yeah, strike that.

10 Where was the proposed going private
11 transaction with Tesla on this proposed timeline on
12 August 10, 2018?

13 A. As it related to Silver Lake, it -- we
14 were -- we would have been at the initial stages.

15 Q. So you hadn't yet reached stage one on
16 this timeline?

17 A. No.

18 Q. Okay. No, you had not reached stage one?

19 A. No, as it relates to Silver Lake's
20 participation, we had not reached stage one.

21 Q. Okay.

22 MR. PORRITT: All right. Why don't we
23 bring over --

24 MS. RIEWE: And Nick --

25 MR. PORRITT: Again, this is a --

1 Exhibit 195?

2 MS. TRIPODI: And that's tab 34. It's

3 Exhibit 194.

4 MR. PORRITT: 194. Yeah. Okay.

5 THE WITNESS: I'm there.

6 (Whereupon Exhibit 194 was marked for
7 identification.)

8 MR. PORRITT: So I've placed before the
9 witness a document marked Exhibit 195 [sic]

10 Bates-stamped SL_3P00000306.

11 THE WITNESS: Yep.

12 BY MR. PORRITT:

13 Q. Do you recall this e-mail, Mr. Durban?

14 A. I do not.

15 Q. Okay. The second paragraph there or
16 second sentence you write, "While being sensitive to
17 Section 203." Do you see that?

18 A. Yes.

19 Q. Do you know what you're referring to
20 there?

21 MS. RIEWE: Objection to form.

22 THE WITNESS: I actually do not.

23 BY MR. PORRITT:

24 Q. Okay. Once again, then there was a list
25 of investors, potential interested existing

1 investors in the middle of Exhibit 195. You see
2 that?

3 A. I do.

4 Q. Okay. Do you recall if this was the list
5 of potential or -- potentially interested or
6 existing investors in Tesla that you were to reach
7 out after August 16, 2018?

8 MS. RIEWE: Objection to form. Objection
9 to form.

10 THE WITNESS: Yes.

11 BY MR. PORRITT:

12 Q. Okay. Do you recall reaching out to any
13 potential interest -- or existing investors in Tesla
14 that -- who aren't listed here?

15 MS. RIEWE: Objection to form. And this
16 was covered extensively in the SEC testimony.

17 THE WITNESS: No, I do not recall any
18 other additional initial investors that were called.

19 BY MR. PORRITT:

20 Q. Below that it says, "Goldman and Silver
21 Lake will make the calls. Not Elon."

22 Do you see that?

23 A. Yes.

24 Q. Do you know why Goldman and Silver Lake
25 were tasked with making the calls rather than Elon

1 Musk?

2 MS. RIEWE: Objection to form.

3 THE WITNESS: I do not recall.

4 BY MR. PORRITT:

5 Q. In this stage in a public-to-private
6 transaction, is it typical for financial advisers to
7 reach out to potentially interested or existing
8 investors rather than the principal --

9 MS. RIEWE: Objection to form.

10 BY MR. PORRITT:

11 Q. -- in your experience?

12 A. Yeah, sure.

13 Q. And then finally there, you say, "However,
14 speed is our collective highest priority and this
15 will help accelerate development of a fully financed
16 proposal."

17 Do you see that?

18 A. Yes.

19 Q. Okay. Do you recall what the status of
20 the proposal was as of August 16, 2018?

21 MS. RIEWE: Objection to form.

22 THE WITNESS: I do not.

23 MR. PORRITT: Elizabeth, if you could
24 bring over 320.

25 MS. TRIPODI: And that's tab 37.

1 A. No.

2 Q. Do you recall that Morgan Stanley was
3 added to the advisers assisting Elon Musk on this
4 transaction?

5 A. I don't.

6 MR. PORRITT: All right. Elizabeth, why
7 don't you bring over 6169. This will be
8 Exhibit 201.

9 MS. TRIPODI: That's tab 47.

10 (Whereupon Exhibit 201 was marked for
11 identification.)

12 MR. PORRITT: So the witness has before
13 him Exhibit 201. It's a document Bates-stamped
14 TESLA_LITTLETON_00006169 through 6238.

15 THE WITNESS: Yes, I'm in the document.

16 BY MR. PORRITT:

17 Q. Okay. Do you recognize this -- this
18 document?

19 A. Yes.

20 Q. All right. What is it?

21 A. It's a presentation I believe we prepared,
22 if I recall correctly, to share with the board.

23 (Reporter requests clarification.)

24 THE WITNESS: The board of directors I
25 believe that's the case.

*In re Tesla, Inc. Securities Litigation***Errata Sheet and Declaration for the Deposition of Egon Pierre-Durban****Deposition Date: September 7, 2021**

Page No.	Line No.	Original Text	Change To	Reason
11	11	“defendant’s [sic]”	“witness’s”	Correction
95	5	“8:14”	“8/14”	Transcription Error
113	11	“He’s reporter”	“He’s a reporter”	Transcription Error
118	19	“pages my”	“pages of my”	Transcription Error
127	22-25	“A. Is there a tab? Well, that’s -- that’s what I’m -- what we’re figuring out. Apparently, it may not be in there, so we’ll have to figure a workaround.”	“A. Is there a tab? Q. Well, that’s -- that’s what I’m -- what we’re figuring out. Apparently, it may not be in there, so we’ll have to figure a workaround.”	Transcription Error
135	18	“additional initial investors”	“additional investors”	Transcription Error
138	22-23	“If -- again, this is”	“If -- you know, this is”	Transcription Error
139	2	“the company”	“a company”	Transcription Error
151	18	“not beyond”	“not -- beyond”	Transcription Error
158	20-21	“which is the Minimar (phonetic) Partners, which”	“which is the -- me and my partners -- which”	Transcription Error
158	21	“(indiscernible)”	“of assets”	Transcription Error
158	24	“MS. RIEWE:”	“THE WITNESS:”	Transcription Error

I, Egon Pierre-Durban, declare under penalty of perjury that I have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

Executed on the 11th day of October 2021.

Egon Durban (Printed Name)

 (Signature)

1 STATE OF CALIFORNIA)
2 COUNTY OF LOS ANGELES) ss.
3

4 I, Elizabeth Borrelli, Certified Shorthand
5 Reporter, Certificate No. 7844, for the State of
6 California, hereby certify:

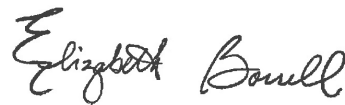
7 I am the deposition officer that
8 stenographically recorded the testimony in the
9 foregoing deposition;

10 Prior to being examined the deponent was
11 first duly sworn by me;

12 The foregoing transcript is a true record
13 of the testimony given;

14 Before completion of the deposition,
15 review of the transcript [X] was [] was not
16 requested. If requested, any changes made by the
17 deponent (and provided to the reporter) during the
18 period allowed are appended hereto.

19
20 Dated: September 17th, 2021.
21

22 
23

24 ELIZABETH BORRELLI, CSR 7844
25